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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL No. 32 OF 2006

Office notes, office memoranda of coram, appearances, Court's orders directions & Registrar's orders	:	Court's or Judge's order

Mr. Navnath, Advocate for appellant.

Mr. Surel S. Shah Advocate for respondent No.1 & 17.

Mr. C. R. Sonawane, advocate for tespondent No. 18.

CORAM: J. N. PATEL,
AND
A. A. SAYED, JJ.

DATE : APRIL 17, 2007.

P.C.:

. Heard. The learned counsel for the appellant initially tried to seek adjournment in the matter, firstly on the ground that Mr. Godbole has been

engaged as counsel to argue the matter, who is in Supreme Court; secondly, that he has not prepared the matter. We are not inclined to grant any adjournment for the reason that the Letters Patent Appeal is pending since one year, only for admission and this court so not propose the issue notice to the otherside.

2. We, therefore, proceed to hear the matter. This Letters Patent Appeal is directed against the order passed by the Revenue Authorities, which has been upheld by the learned Single Judge of this Court, by the order dated

23rd November 2005 in Writ Petition No.3607 of 2005.

3. The subject matter of the dispute pertains to access through the land of the petitioner i.e. land Gat No. 298/2A, in favour of the respondent.

4. Mr. Patil, learned counsel appearing for appellant submits that the Revenue Authorities have given perverse finding of the fact that respondents have right of access through the land of respondent no.1 Arun Lamkane to carry their bullock cart, which is without any document and evidence on record, and therrefore, the findings of the revenue authorities

as well as non interference in the matter by this court requires reconsideration.

5. Another contention is in respect of the limitation. It is submitted that the application for claiming right of way has been filed beyond the stipulated period of six months, as provided under section 5 of the Mamlatdar’s Court Act 1906.

6. We find that there is no substance in the appeal, as the evidence on the basis of which Tahsildar arrived at a finding that the respondent is entitled for

access through the land of the appellants to carry bullock cart to his field, stand established. The said findings have been upheld by the District Collector in Revision and in view of the concurrent finding of the Revenue Authorities, and confirmed by the learned Single Judge of this Court, we do not find it necessary to interfere into the impugned order.

7. It is contention of the learned counsel for the appellant that the application for claiming right of way has not been filed within six months, as provided under sub-section (3) of section 5 of the Mamlatdar’s Court

Act. Sub-sectin (4) of section 5 clarifies the positon, which provides that cause of action shall be deemed to have arisen on which the impediment herein the nature of disturbance or obstruction first commences. Thereore, the learned Judge has rightly held that it is continuous cause of action. Therefore, there is no merit in the appeal and the same is dismissed.

Sd/-
[A. A. SAYED, J.]

Sd/-
[J. N. PATEL, J.]